



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

File: EAC-02-136-51076 Office: Vermont Service Center

Date: FEB 10 2003

IN RE: Petitioner:  
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:

INSTRUCTIONS:

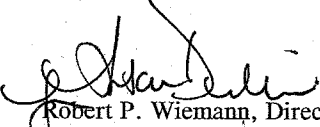
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a management consulting and international placement business with four employees and a gross annual income of \$648,000. It seeks to employ the beneficiary as an international health care placement specialist for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the petitioner had not established that a baccalaureate degree in a specific specialty is required for the proffered position. On appeal, counsel states, in part, that the proffered position, which requires human resources management and leadership, is so specialized and complex that a baccalaureate degree, preferably in medical science, is required. Counsel submits an opinion from an academic expert in support of his claim.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As an international recruitment company specializing in Philippine recruitment, the company requires a theoretical knowledge and skills regarding Philippine cultural background, accreditation process, and healthcare industries' standard training procedures in the Philippines. Since the company is in the start-up

phase, a strong practical experience in management and leadership is required in order to meet and perform the stringent specialty occupation. The International Healthcare Placement Specialist performs a variety of duties related to the administration of the human resources function including recruitment, and prospective employee selection. The position aims to apply professional principles of human resources procedures, analysis and investigation to the functional area of the application processing, assessment, and selection of candidates for our various clients in the Healthcare industry. The position exercises considerable initiative and independent judgment in the selection of candidates e.g. evaluation of resumes against the advertised selection to identify the most competitive candidates to be interviewed, select for interview a sufficient number of candidates to ensure consideration of the most qualified candidates. Other function of the position includes: assist the President with marketing and advertising strategies, public relations, and ensure productivity meets the quota.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in biology or a related field. The proffered position appears to be similar to that of an employment, recruitment, and placement specialist. A review of the Department of Labor's Occupational

Outlook Handbook, 2002-2003 edition, at pages 62-63, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an employment, recruitment, and placement specialist. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Other employers prefer college graduates with a technical or business background or a well-rounded liberal arts education.

In addition, the petitioner's assertion that the proffered position requires specialized knowledge regarding the Filipino culture, accreditation process, and healthcare standard training procedures, is noted. The petitioner, however, has not established that such knowledge is of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with such issues or a less extensive education, is necessary for the successful completion of its duties. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as biology, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Counsel has provided a letter from an academic expert who states, in part, that the usual requirement for positions such as the proffered position is a baccalaureate degree in biological or health sciences. Such letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of his assertions. In addition, he has not indicated the number or percentage of international health care placement specialists who hold such degrees.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.